



4000-01-U

DEPARTMENT OF EDUCATION

Privacy Act of 1974; System of Records--Office of Hearings and Appeals (OHA) Records System

AGENCY: Office of Hearings & Appeals, Office of Management, Department of Education.

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the Privacy Act of 1974, as amended (Privacy Act), the Department of Education (Department) publishes this notice of a new system of records entitled "The Office of Hearings & Appeals (OHA) Records System" (18-05-19).

DATES: Submit your comments on the system of records in this notice on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The Department filed a report describing the new system of records covered by this notice with the Chair of the Senate Committee on Homeland Security and Governmental Affairs, the Chair of the House Committee on Oversight and Government Reform, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on September 26, 2013. This system of records will become effective at the later date of - (1) the expiration of the 40 day period for OMB review on November 5, 2013, unless

OMB waives 10 days of the 40-day review period for compelling reasons shown by the Department, or (2) [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], unless the system of records needs to be changed as a result of public comment or OMB review. The Department will publish any changes to the system of records or routine uses that result from public comment or OMB review.

ADDRESSES: Address all comments about this new system of records notice to Frank Furey, Director, Office of Hearings & Appeals, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 2100A, Washington, DC 20202-4416. If you prefer to send your comments through the Internet, use the following address:

[comments@ed.gov](mailto:comments@ed.gov)

You must include the term "OHA system of records" in the subject line of your electronic message.

During and after the comment period, you may inspect all comments about this notice at the U.S. Department of Education in room 2100A, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:00 a.m. and 4:30 p.m., Eastern Time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing  
the Rulemaking Record

On request we will supply an appropriate accommodation or auxiliary aid to an individual with a disability, such as a reader or print magnifier, who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under FOR FURTHER INFORMATION CONTACT.

FOR FURTHER INFORMATION CONTACT: Frank Furey, Director, Office of Hearings & Appeals, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 2100A, Washington, DC 20202-4416.

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), you may call the Federal Relay Service (FRS), toll free, at 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

Introduction

The Privacy Act requires the Department to publish in the Federal Register this notice of a new system of records maintained by the Department (5 U.S.C. 552a(e)(4) and (11)). The Department's regulations implementing the

Privacy Act are contained in the Code of Federal Regulations (CFR) in 34 CFR part 5b.

The Privacy Act applies to any record about an individual that is maintained in a system of records from which individually identifying information is retrieved by a unique identifier associated with each individual, such as a name or Social Security number. The information about each individual is called a "record," and the system, whether manual or computer-based, is called a "system of records."

The Privacy Act requires each agency to publish a notice of a system of records in the Federal Register and to prepare and send a report to OMB whenever the agency publishes a new system of records or makes a significant change to an established system of records. Each agency is also required to send copies of the report to the Chair of the Senate Committee on Homeland Security and Governmental Affairs and the Chair of the House Committee on Oversight and Government Reform. These reports are included to permit an evaluation of the probable effect of the proposal on the privacy rights of individuals.

"The Office of Hearings & Appeals (OHA) Records System" reflects how the Office of Hearings and Appeals processes its records, including the development of a case

tracking database and the use of electronic filing designed to streamline case management. This system of records also reflects the Office of Hearings and Appeals' jurisdiction over salary offset cases including waiver requests and hearing requests challenging the validity of salary overpayment debts involving current and former Department employees, and administrative wage garnishment cases under the cross servicing program of the Department and the U.S. Department of the Treasury.

This notice describes in detail the system of records, including among other items, its title, location, authority for maintenance of the system, routine uses of records maintained in the system, policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system (specifically the retention and disposal of system records), safeguards that protect the records in the system, and system manager's title and address.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed in the preceding paragraph.

Electronic Access to this Document: The official version of this document is the document published in the Federal Register. Free Internet access to the official edition of the Federal Register and the Code of Federal Regulations is available via the Federal Digital System at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). At this site you can view this document, as well as all other documents of this Department published in the Federal Register, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the Federal Register by using the article search feature at: [www.federalregister.gov](http://www.federalregister.gov). Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: October 17, 2013

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Denise L. Carter,  
Principal Deputy Assistant Secretary  
for Management.  
Delegated the Authority to Perform the  
Functions and Duties of the Assistant  
Secretary for Management.

For the reasons discussed in the preamble, the Principal Deputy Assistant Secretary for Management, U.S. Department of Education publishes a notice of a new system of records to read as follows:

SYSTEM NUMBER:

18-05-19.

SYSTEM NAME:

The Office of Hearings & Appeals (OHA) Records System.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

OHA, Office of Management, U.S. Department of Education, 400 Maryland Avenue, SW., Suite 2100A, 490 L'Enfant Plaza, Washington, DC 20202-4616.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system of records contains records about current and former Department of Education (Department) employees against whom the Department has a claim for a salary overpayment debt who request a waiver or challenge the validity of a salary overpayment. It also contains records regarding recipients subject to administrative wage

garnishments under the cross servicing program of the Department and the U.S. Department of the Treasury (Treasury). Administrative wage garnishment applies to collection of any financial obligation owed to the United States by an individual that arises under a program the Department administers with the exception of debts that arise from an individual's obligation to repay a loan or an overpayment of a grant received under a student financial assistance program authorized under title IV of the Higher Education Act of 1965, as amended.

#### CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records notice covers salary overpayment case files that contain information that is pertinent to the particular claim (e.g., a request for a waiver of a salary overpayment filed by current or former Department employees or a salary pre-offset hearing request filed by a current or former Department employee), including but not limited to, documents that contain the employee's name, sex, date of birth, home address, telephone number, e-mail address, as well as information that is pertinent to the particular claim being asserted, including audits of payroll accounts during period(s) of overpayments, earning and leave statements, identity of



debtors and information pertaining to how debts arose, and documents relating to financial hardship.

This system of records also covers wage garnishment case files that contain information that is pertinent to the particular claim (e.g., a wage garnishment proceeding) including but not limited to, documents that contain the individual's name, sex, date of birth, home address, telephone number, e-mail address, as well as information that is pertinent to the particular claim being asserted, including documents relating to the existence, amount, or current enforceability of the debt, financial hardship, and payroll documentation.

This system of records does not include records covered by other Departmental or governmental system of records notices, such as the Department's systems of records notices entitled "Education's Central Automated Processing System (EDCAPS)" (18-03-02) and the "Receivables Management System" (18-03-03) (which the Department soon expects to delete and include as part of the EDCAPS system of records notice).

#### AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. §5584; 31 U.S.C. §3711 et seq.;, 34 CFR part 32; 34 CFR part 34; Federal Claims Collection Standards (FCCS) 31 CFR chapter IX, parts 900-904; and the U.S.

Department of Education, Administrative Communications  
System, Handbook for Processing Salary Overpayments  
(Handbook ACS-OM-04) (Jan. 19, 2012).

PURPOSE(S) :

The information in this system of records is used: to adjudicate requests for waivers of salary overpayments and claims regarding the validity of salary overpayments made to current and former employees and to adjudicate administrative wage garnishments under the cross servicing program of the Department and Treasury. The Department also uses the OHA Records System to provide docket management, including scheduling of hearings, oral arguments, and determining compliance with parties' filing deadlines and to produce docket reports that may be distributed internally in the Department. The authorities identified in this notice require hearing officers to preside over and issue decisions regarding the aforementioned cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The Department may disclose information contained in a record in this system of records without the consent of the individual if the disclosure is compatible with the

purposes for which the record was collected. The Department may make these disclosures on a case-by-case basis or, if the Department has complied with the computer matching requirements of the Computer Matching and Privacy Protection Act of 1988, as amended, under a computer matching agreement.

(1) Program Purposes. The Department may disclose records from this system of records to any agency or entity administering the Department's payroll system to inform them of decisions regarding salary overpayment cases.

(2) Debt Servicing. The Department may disclose records to Treasury or to the employers of individuals subject to administrative wage garnishments for the purpose of collecting debts owed to the Government by individuals subject to administrative wage garnishments.

(3) Disclosure for Use by Other Law Enforcement Agencies. The Department may disclose information to any Federal, State, local, or foreign agency or other public authority responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation if that information is relevant to any enforcement, regulatory, investigative, or prosecutorial responsibility within the receiving entity's jurisdiction.

(4) Enforcement Disclosure. In the event that information in this system of records indicates, either on its face or in connection with other information, a violation or potential violation of any applicable statute, regulation, or order of a competent authority, the Department may disclose the relevant records to the appropriate agency, whether foreign, Federal, State, Tribal, or local, charged with the responsibility of investigating or prosecuting that violation or charged with enforcing or implementing the statute, executive order, rule, regulation, or order issued pursuant thereto.

(5) Litigation and Alternative Dispute Resolution (ADR) Disclosures.

(a) Introduction. In the event that one of the parties listed in this paragraph is involved in judicial or administrative litigation or ADR, or has an interest in judicial or administrative litigation or ADR, the Department may disclose certain records to the parties described in paragraphs (b), (c), and (d) of this routine use under the conditions specified in those paragraphs:

(i) The Department of Education, or any component of the Department;

(ii) Any Department employee in his or her official capacity;

(iii) Any Department employee in his or her individual capacity if the Department of Justice (DOJ) has been requested to or has agreed to provide or arrange for representation for the employee;

(iv) Any Department employee in his or her individual capacity where the agency has agreed to represent the employee; or

(v) The United States where the Department determines that the litigation is likely to affect the Department or any of its components.

(b) Disclosure to the Department of Justice (DOJ).

If the Department determines that disclosure of certain records to the DOJ is relevant and necessary to judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the DOJ.

(c) Adjudicative Disclosures. If the Department determines that it is relevant and necessary to the judicial or administrative litigation or ADR to disclose certain records to an adjudicative body before which the Department is authorized to appear, to an individual, or to an entity designated by the Department or otherwise empowered to resolve or mediate disputes, the Department may disclose those records as a routine use to the adjudicative body, individual, or entity.

(d) Parties, counsels, representatives and witnesses.

If the Department determines that disclosure of certain records to a party, counsel, representative, or witness is relevant and necessary to the judicial or administrative litigation or ADR, the Department may disclose those records as a routine use to the party, counsel, representative, or witness.

(6) Employment, Benefit, and Contracting Disclosure.

(a) For Decisions by the Department. The Department may disclose a record to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement or other pertinent records, or to another public authority or professional organization, if necessary to obtain information relevant to a Department decision concerning the hiring or retention of an employee or other personnel action, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(b) For Decisions by Other Public Agencies and Professional Organizations. The Department may disclose a record to a Federal, State, local, or foreign agency or other public authority or professional organization, in connection with the hiring or retention of an employee or other personnel action, the issuance of a security

clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit, to the extent that the record is relevant and necessary to the receiving entity's decision on the matter.

(7) Employee Grievance, Complaint, or Conduct Disclosure. The Department may disclose a record in this system of records to another agency of the Federal Government if the record is relevant to one of the following proceedings regarding a current or former employee of the Department: a complaint, a grievance, or a disciplinary or competency determination proceeding. The disclosure may only be made during the course of the proceeding.

(8) Labor Organization Disclosure. The Department may disclose records from this system of records to an arbitrator to resolve disputes under a negotiated grievance procedure or to officials of labor organizations recognized under 5 U.S.C. chapter 71 when relevant and necessary to their duties of exclusive representation.

(9) Freedom of Information Act (FOIA) and Privacy Act Advice Disclosure. The Department may disclose records to the Department of Justice or the Office of Management and Budget (OMB) if the Department concludes that disclosure is

desirable or necessary in determining whether particular records are required to be disclosed under FOIA or the Privacy Act.

(10) Disclosure to the Department of Justice. The Department may disclose records to DOJ to the extent necessary for obtaining DOJ advice on any matter relevant to an audit, inspection, or other inquiry related to the programs covered by this system.

(11) Contract Disclosure. If the Department contracts with an entity for the purposes of performing any function that requires disclosure of records in this system to employees of the contractor, the Department may disclose the records to those employees. Before entering into such a contract, the Department must require the contractor to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the records in the system.

(12) Research Disclosure. The Department may disclose records to a researcher if an appropriate official of the Department determines that the individual or organization to which the disclosure would be made is qualified to carry out specific research related to functions or purposes of this system of records. The official may disclose records from this system of records to that researcher solely for the purpose of carrying out



that research related to the functions or purposes of this system of records. The Department must require the researcher to maintain Privacy Act safeguards as required under 5 U.S.C. 552a(m) with respect to the disclosed records.

(13) Congressional Member Disclosure. The Department may disclose records to a member of Congress from the record of an individual in response to an inquiry from the member made at the written request of that individual. The member's right to the information is no greater than the right of the individual who requested it.

(14) Disclosure to the Office of Management and Budget (OMB) for Credit Reform Act (CRA) Support. The Department may disclose records to OMB as necessary to fulfill CRA requirements.

(15) Disclosure in the Course of Responding to Breach of Data. The Department may disclose records from this system of records to appropriate agencies, entities, and persons when: (a) the Department suspects or has confirmed that the security or confidentiality of information in the OHA Records Systems has been compromised; (b) the Department has determined that as a result of the suspected or confirmed compromise, there is a risk of harm to economic or property interests, identity theft or fraud, or

harm to the security or integrity of the OHA Records System or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and, (c) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Not applicable to this system of records notice.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Department maintains records in paper files in filing cabinets, and electronically on a computerized tracking system.

RETRIEVABILITY:

Records are indexed by docket number and can be retrieved by the name of the non-Government party.

SAFEGUARDS:

Records are maintained electronically and in paper files.

All physical access to the Department's site where these paper and electronic records are maintained is controlled and monitored by security personnel who check each individual entering the building for his or her employee or visitor badge. Paper records are maintained in a secured space in locked cabinets.

In accordance with the Department's Administrative Communications System (ACS) Directive OM: 5-101 entitled "Contractor Employee Personnel Security Screenings," all contract personnel who have facility access and system access are required to undergo a security clearance investigation. Individuals requiring access to Privacy Act data are required to hold, at a minimum, a moderate-risk security clearance level. These individuals are required to undergo periodic screening at five-year intervals.

In addition to holding security clearances, contract and Department personnel are required to complete security awareness training on an annual basis. This training is required to ensure that contract and Department users are trained appropriately in safeguarding Privacy Act data in accordance with OMB Circular No. A-130, Appendix III.

The computer system employed by the Department offers a high degree of resistance to tampering and circumvention. This security system limits data access to Department and

contract staff on a need-to-know basis, and controls individual users' ability to access and alter records within the system. All users of this system of records are given a unique user identification.

The OHA electronic records system is a web-based J2EE application that is platform independent which captures all information relating to salary overpayment cases and administrative wage garnishment cases. Authorized log-on codes and passwords prevent unauthorized users from gaining access to data and system resources. All users have unique log-on codes and passwords. The password scheme requires that users must change passwords every 90 days and may not repeat the old password.

Any individual attempting to log on who fails is locked out of the system after three attempts. Access after that time requires intervention by the system manager.

#### RETENTION AND DISPOSAL:

The records are maintained in accordance with the Department of Education Records Disposition Schedules (ED/RDS) 241 and 243. Under ED/RDS 241, "Administrative Adjudication Files for the Office of Hearings and Appeals," official docket files are cut off annually upon close of a

case and transferred to a certified records center or to a certified records storage facility one year after cut off. Files will be destroyed or deleted six years after cutoff.

For attorney working files, these files will be cut off annually upon close of case and destroyed or deleted when no longer needed for administrative or reference purposes.

Duplicate copies maintained for reference purposes and that do not serve as the record copy will be destroyed or deleted when no longer needed for reference.

Under ED/RDS 243, "Decisions Made by Hearing Officials, Administrative Law Judges, the Secretary of Education and Members of the CRRA," copies of the original decision are permanent and removed before official docket file is transferred to a certified records center. Original decisions are held on site and transferred to the National Archives and Records Administration in five-year blocks. Duplicate copies regardless of medium maintained for reference purposes do not serve as the record copy and will be destroyed/deleted when no longer needed for reference.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Hearings & Appeals, Office of Management, U.S. Department of Education, 400 Maryland

Avenue, SW., Suite 2100A, 490 L'Enfant Plaza, Washington,  
DC 20202-4616.

#### NOTIFICATION PROCEDURE:

If you wish to determine whether a record exists regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

#### RECORD ACCESS PROCEDURE:

If you wish to gain access to a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.5, including proof of identity.

#### CONTESTING RECORD PROCEDURE:

If you wish to contest the content of a record regarding you in the system of records, contact the system manager. Your request must meet the requirements of the regulations at 34 CFR 5b.7.

#### RECORD SOURCE CATEGORIES:

The information in the OHA Records System comes from a number of sources including: employees, former employees, and grant recipients. Information may also be supplied by an individual's attorney or representative and by Department officials or other employees.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

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